

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HERITAGE GUITAR, INC.,

Plaintiff,

vs.

Case No: 1:20-cv-229
Hon. Hala Y. Jarbou

GIBSON BRANDS, INC.,

Defendant.

MOTION HEARING

HELD BEFORE THE HONORABLE RAY KENT, U.S. MAGISTRATE JUDGE

GRAND RAPIDS, MICHIGAN - JANUARY 27, 2022

APPEARANCES:

For the Plaintiff:

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MS. MELINDA DEXTER, CSR-4629, RMR, CRR

U.S. District Official Court Reporter

602 Federal Building

110 Michigan St., NW

Grand Rapids, MI 49503

1 Grand Rapids, Michigan

2 January 27, 2022

3 1:24 p.m.

4 THE CLERK: The United States District Court for the
5 Western District of Michigan is now in session. The Honorable
6 Ray Kent, United States Magistrate Judge, presiding. Please
7 be seated.

8 THE COURT: This is 20-cv-229, Heritage v. Gibson.

9 Mr. Mouw and Mr. Ford on behalf of Heritage.

10 Mr. Schuettinger -- jer -- Schuettinger on behalf of
11 Gibson. We are here on Heritage's motion to extend discovery
12 limits. It appears in the court's docket at ECF 107. I've
13 read the motion and the memorandum at ECF 108 and also
14 Gibson's brief in opposition; ECF 110.

15 So anything you guys want to say that's not in your
16 briefs, happy to hear it.

17 MR. FORD: Your Honor --

18 THE COURT: Have at it. Mr. Ford?

19 MR. FORD: Ford. So just to address some of the
20 points. As we mentioned in the brief, it's a modest request
21 given the new antitrust claims. In -- in --

22 THE COURT: And you know what? I just changed my
23 mind.

24 MR. FORD: Sure.

25 THE COURT: Can you sit down?

1 MR. FORD: Sure.

2 THE COURT: I'm granting the motion, and each side
3 will get five more, what is it, interrogatories; five more
4 document requests?

5 MR. FORD: Correct.

6 THE COURT: Okay. Here is the thing, though: This
7 case has got to get going. You haven't taken a dep yet?

8 MR. FORD: The first deposition is tomorrow,
9 Your Honor.

10 THE COURT: Okay. Well, good. And do we have more
11 on the schedule?

12 MR. SCHUETTINGER: If I can address that point --

13 THE COURT: Yeah.

14 MR. SCHUETTINGER: -- because that's not something
15 that is in the brief that I'd like to address.

16 THE COURT: Sure.

17 MR. SCHUETTINGER: It has been pending. I've been
18 asking since August for deposition dates.

19 THE COURT: Yep.

20 MR. SCHUETTINGER: I've asked ten times, and they've
21 only given us one individual tomorrow. Their position is
22 they're not going to provide other dates because they might be
23 antitrust witnesses. And they supplemented their initial
24 disclosures, I believe, two weeks ago, and there were two
25 witnesses that clearly said they had information relevant to

1 antitrust. And so we said, "Well, we can do those later.
2 We'd like to proceed with the others."

3 THE COURT: Mm-hmm.

4 MR. SCHUETTINGER: They got back and said, "Well,
5 others have information relevant to antitrust. You need to
6 look at them clearer, you know, if they had marketing."

7 And so we asked, "Could you be very specific? If
8 you're not going to provide the witness because they have
9 information related to antitrust, can you just say that in the
10 initial disclosures so we cannot have this kind of guessing
11 game of what do they really know?"

12 And our overarching concern is that we do need to get
13 this case going. We have a trial in May with a different case
14 that is going to be two weeks that's going to take up my
15 client's time. I don't want to get in a situation where we've
16 put this case on the back burner and Heritage wants to proceed
17 with (inaudible) trial. We're just not going to be available.

18 You know, we want to get our homework done sooner
19 rather than later in this case. And related to that, I'm not
20 saying there is gamesmanship on the other side, but we do want
21 to alert the Court, and we notified opposing counsel, that our
22 client is not going to be available in May the first two
23 weeks. There is the two-week trial.

24 Discovery ends in May in this case. We would like to
25 get everything done in April in case there is an issue we can

1 address, you know, with this Court, but I don't want a
2 situation where, you know, we're not getting witnesses, we're
3 not getting discovery, and then all of a sudden we're getting
4 bombarded in May in this case because the other side wants to
5 finish the case. So I'm in agreement we would like to get
6 this case going before the trial.

7 THE COURT: Well, you got nine -- roughly 90 days,
8 huh? February, March, April. If we're going to say May, it's
9 going to be problematic.

10 MR. SCHUETTINGER: Right.

11 THE COURT: You each get ten deps. How hard can it
12 be to schedule ten deps over the next 90 days?

13 MR. FORD: Your Honor, if I may respond? One of the
14 issues, as you know, we need to start --

15 THE COURT: What are we responding to? Just get the
16 deps scheduled.

17 MR. FORD: Well, the point I want to make is we are
18 serving antitrust discovery to get documents from them about
19 the antitrust case. We can't take those -- all those
20 depositions until we get all the documents.

21 And our posture -- which is why we wanted to serve
22 these documents now to get moving. Our posture with Gibson
23 was if you want to take the depositions of our witnesses now,
24 that's fine, we'll make them available, but you can't ask them
25 to be deposed again in two months if we produced documents in

1 response to the antitrust request.

2 So we are not withholding any witness. We're just
3 telling them if you want to take their depositions now as
4 opposed to March or April, that's your decision, but we're not
5 going to put the witnesses up again.

6 That's been the issue because there are going to be
7 additional documents that are produced that are relevant to
8 the antitrust case, and we just want to make sure witnesses
9 are deposed only once. That's, in fact, I think, the best way
10 to make sure this gets done in time.

11 THE COURT: Well, when will the documents be
12 produced?

13 MR. FORD: Your Honor, given your order just now, we
14 can serve our additional requests tomorrow or Monday. If
15 Your Honor would allow, rather than wait 30 days for a
16 response, then negotiate, and then wait another 30 days for
17 documents, if we could meet and confer as early as later next
18 week to try to iron out what needs to be done, then I think
19 the production can be done over a few weeks and depositions
20 can take place.

21 It ought to take place in March and April, at least
22 our depositions of Gibson's witnesses, because we want to do
23 those after we get the antitrust discovery so we can have
24 those documents to question the witnesses. They've subpoenaed
25 Heritage witnesses for March, and we'll make that work, but,

1 again, if they want to take a deposition now, that's fine, but
2 one deposition per witness.

3 THE COURT: Well, why don't you tell them which of
4 your witnesses is going to speak to antitrust issues.

5 MR. FORD: Because the fact of the matter is, with
6 respect to market definition, a witness who is an industry
7 participant will have knowledge about competition in the
8 market. So, frankly, all of our witnesses, with the
9 exception, perhaps, of Mr. -- Mr. Leach tomorrow, has
10 information because they were market participants.

11 So I can't warrant that they won't have knowledge of
12 market conditions that Gibson deems necessary. I'm not trying
13 to hide the ball. I'm just saying if a witness was in charge
14 of sales and marketing, selling guitars, they will have
15 knowledge about competition in the marketplace that bears on
16 the antitrust claim.

17 THE COURT: All right. Well, let -- let me be clear:
18 If the case comes back to me on a motion to extend discovery,
19 the answer is probably going to be no. So this case -- you've
20 got to get the discovery done on schedule. I don't care how
21 you do it. So go ahead, serve whatever you got ASAP.

22 You know, obviously it would benefit your client to
23 respond as soon as it's possible for you to do so, so that we
24 can move to the next step, and that is depositions.

25 MR. SCHUETTINGER: Well, I understand that point, but

1 this case was filed in 2020 by the Plaintiff.

2 THE COURT: Yeah. They're naughty. They didn't do
3 it. I get that, okay, but the fact is we're where we are.
4 We've got 90-ish days to get all of the deps done, and we're
5 going to get them done, or they just -- you'll go to trial
6 without the deps, which, you know, I mean, happens, right?

7 Every criminal case, that is exactly what a criminal
8 case is. There are no depositions in a criminal case. You
9 put a witness on the stand, they testify, you cross-examine,
10 jury reaches a verdict. So if that's the way it plays out in
11 this case, that's the way it plays out in this case.

12 MR. SCHUETTINGER: And just to my first point, is
13 there -- we've looked in Georgia and California where I'm
14 admitted. You can file a notice of leave of absence to alert
15 the Court that, you know, either your client or counsel is not
16 going to be available. We've looked here in Michigan and
17 haven't seen anything.

18 Is there anything that we could file just to alert
19 the Court that we are unavailable in May in case there is
20 this, you know --

21 THE COURT: Well, you just told me.

22 MR. SCHUETTINGER: Okay.

23 THE COURT: Let's call that good enough.

24 MR. SCHUETTINGER: Okay.

25 THE COURT: They're not available in May. You

1 gentlemen understand that? So don't be setting deps in May
2 because it's just not going to work. You know, they're not
3 available in May. Don't set deps in May.

4 MR. SCHUETTINGER: Thank you.

5 THE COURT: You're welcome. Anything else we can do
6 while we're here?

7 MR. SCHUETTINGER: The only other issue, I think,
8 that is ambiguous in the scheduling order is kind of when we
9 do the ADR, and I was reading that --

10 THE COURT: Okay.

11 MR. SCHUETTINGER: -- and I think that's before you.

12 THE COURT: Are we looking at the first amended case
13 management order; 103?

14 MR. SCHUETTINGER: I am, Your Honor.

15 THE COURT: Okay. That has a early settlement
16 conference, which -- we did that, right?

17 MR. MOUW: Yes.

18 THE COURT: Okay. Second settlement conference,
19 December of this year. Did you also -- are we also doing
20 some, like, voluntary facilitative mediation or anything, or
21 is it just -- you're putting all your eggs in my basket?

22 MR. SCHUETTINGER: We haven't discussed -- I haven't
23 discussed that with opposing counsel. I just won't -- you
24 know, while we're here with the Court, is December a realistic
25 time for the Court?

1 THE COURT: I'll do it whenever you want.

2 MR. SCHUETTINGER: Okay.

3 THE COURT: You know, we can do it -- I won't say
4 next week, but we can do it almost as soon as you want to do
5 it --

6 MR. SCHUETTINGER: Okay.

7 THE COURT: -- if both sides agree and if both sides
8 are sincerely interested in resolving the case, which means
9 both sides are going to have to compromise their desires to
10 get the case done. You guys know that. It's the way it works.

11 So if those things are true, all you have to do is
12 call Faith Webb, my judicial assistant, and we'll set up a
13 mediation session, bring you in here, clients got to come, and
14 we'll try to get the case settled.

15 MR. SCHUETTINGER: So that would be in person here?

16 THE COURT: Yep.

17 MR. SCHUETTINGER: Okay. That's the only outstanding
18 issue I had, Your Honor.

19 THE COURT: Okay.

20 How about you, Gentlemen? Anything from your side?

21 MR. FORD: Nothing here. We'll serve our discovery
22 in the next couple days. We'll meet and confer later next
23 week and try to expedite all of this.

24 THE COURT: Yeah. How about just talking to each
25 other about all of the issues, about the deps, who -- you

1 know, I don't see any point in, you know, anybody trying to
2 hide the ball. I mean, who are your witnesses, you know, that
3 you intend to put on the witness stand at trial. Tell the
4 other side. They can notice the depositions, take the depositions, and
5 we'll get the depositions done. We clear?

6 MR. SCHUETTINGER: Yes, Your Honor.

7 THE COURT: No gamesmanship. We just need to get the
8 job done here.

9 We clear? How about you, Plaintiff's Counsel?
10 Mr. Ford, clear?

11 MR. FORD: We're clear.

12 THE COURT: Okay. All right. Safe travels,
13 everybody.

14 MR. SCHUETTINGER: Thank you.

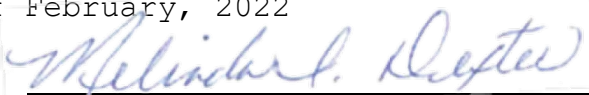
15 (At 1:39 p.m., the matter was concluded.)

16 * * * * *

17 C E R T I F I C A T E

18 I certify that the foregoing is a transcription
19 from the digital recording of the proceedings in the
20 above-entitled matter transcribed to the best of my ability.

21 Signed: 18th day of February, 2022

22 
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